IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

OP.No. 22140 of 2002(I)

PETITIONER:

K.SHAJI, S/O.KUNHIRAMAN NAIR,
KARUKANDATHIL HOUSE, VATTOLLY,
CHITTARIPARAMBU P.O.,
KANNUR DISTRICT.

BY ADV. SRI.P.V.SURENDRANATH

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO LOCAL SELF GOVT.DEPARTMENT,
THIRUVANANTHAPURAM.

2. DEPUTY DIRECTOR OF PANCHAYATH,
KANNUR P.O., KANNUR,
KANNUR DISTRICT.

3. CHITTARIPARAMBU GRAMA PANCHAYATH,
P.O.CHITTARIPARAMBU,
KANNUR DISTRICT,
REPRESENTED BY ITS SECRETARY.

4. THE SECRETARY,
CHITTARIPARAMBU GRAMA PANCHAYATH,
P.O.CHITTARIPARAMBU,
KANNUR DISTRICT.

5. M.GOVINDAN, S/O.RAMAN NAIR,
MANJORAYIL HOUSE, CHITTARIPARAMBU P.O.,
KANNUR DISTRICT.

R1&2 BY GOVERNMENT PLEADER SMT.SMITHA
R5 BY ADV. SRI.P.NARAYANAN
SRI.M.P.ASHOK KUMAR
R3 & 4 BY ADV. SMT.M.A.ZOHRA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON 22/02/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.37940/2002 IN O.P. NO.22140/2002

DISMISSED:

22.2.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE REPRESENTATION DT.2.5.02 SUBMITTED BY PETITIONER BEFORE R3.

P2: TRUE COPY OF REPLY ISSUED BY PANCHAYAT DT.1.6.2002.

P3: TRUE COPY OF GOVT. ORDER DT.29.8.2001 ISSUED TO R5.

P4: TRUE COPY OF GOVT. ORDER DT.4.2.2002 ISSUED TO R4.

RESPONDENT'S EXHIBITS:

R3(a): TRUE COPY OF THE NOTICE DT.1.6.2001 ISSUED TO R5.

R3(b): TRUE COPY OF NOTICE DT.8.6.2001 ISSUED BY PANCHAYAT.

R3(c): .DO. DT.26.7.2001 .DO. TO R5.

R3(d): TRUE COPY OF RENT DEED EXECUTED BETWEEN R5 AND FIROZ.

R3(e): TRUE COPY OF NOTICE ISSUED TO R5 DT.21.8.2001.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.22140 of 2002

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Dated this the 22nd day of February, 2007.

JUDGMENT

The O.P. is filed challenging Exts.P3 and P4 orders of the Government staying the decision of the Panchayat to demolish the construction made by 5th respondent in violation of Section 220(b) of the Kerala Panchayat Raj Act. In fact there was another O.P., O.P. NO.6615/2000 filed before this court which was disposed of on 22.3.2006. I find the order of the Government was against demolition and that was a temporary one till disposal of the abovereferred O.P. The building constructed by 5th respondent is admittedly a commercial building and it is not know whether there is any violation of the above provision of the Panchayat Raj Act in the construction and if so, the extent of violation. The Panchayat is the beneficiary of a commercial building because it is entitled to collect tax. Therefore, as far as possible, a construction should not be destroyed merely for violation of a provision of the Act. Ever so many buildings are constructed in violation of Building Rules and even Government has granted exemption in many cases. However, if the construction causes any obstruction to free traffic, then demolition is called

for, for clearance of vehicular traffic. Since the Panchayat has raised complaint and Government has not decided the matter finally, I feel the matter can be left for decision by the Government, but after calling for report from the PWD about obstruction, if any, caused by building of the 5th respondent. Government is directed to take a decision after calling for report from the Executive Engineer of PWD who will conduct local inspection and forward the report. The O.P. is accordingly disposed of directing the Government to take a decision with reference to judgment in O.P. 6615/2000 also, within a period of six months from now.

C.N.RAMACHANDRAN NAIR
Judge

pms